



Colbert
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Ken Eikenberry

ATTORNEY GENERAL OF WASHINGTON

7th FLOOR, HIGHWAYS-LICENSES BUILDING • OLYMPIA, WASHINGTON 98504-8071

December 5, 1988

Jim Nicoll
Land & Natural Resources Div.
U.S. Department of Justice
10th Street & Pennsylvania Ave. NW
Washington, D.C. 20530

VIA EXPRESS MAIL

Re: Colbert Landfill Consent Decree

Dear Jim,

As you are aware, the State of Washington is anxious to lodge the Consent Decree for remedial action at the Colbert Landfill Site as soon as possible. This letter is written to inform you of the reasons for urgent attention to this matter needed from the Department of Justice.

On November 8, the voters of the State of Washington passed Initiative 97 into law. This initiative repeals and replaces Washington's existing hazardous waste cleanup statute, ch. 70.105B RCW, effective March 1, 1989. Under state law, repeal of the existing law terminates all rights dependent on the repealed statute and all proceedings based on it. Seattle Rendering Works v. Darling-Delaware Co., 104 Wn.2d 15, 701 P.2d 502 (1985).

I am concerned that delays in processing the Colbert Consent Decree may affect the ability to have it finalized by March 1, 1989. Under existing law, we must allow a minimum of 30 days for public review and comment prior to seeking entry of the Decree by the District Court. This means that a signed version must be lodged no later than January 30. To be on the cautious side, we need to allow more time to insure final entry before March 1. I strongly prefer to lodge the Decree for comment before the Christmas holidays.

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If entry of the Decree were to be delayed past March 1, I believe that we would be required to redraft, possibly altering, many provisions of the Decree. Although I believe that the Decree as it presently stands satisfies the intent of both ch. 70.105B RCW and Initiative 97, I am concerned that if the March 1 deadline is not met, it will be delayed much longer while being reviewed for conformity with the state's new legal standards.

I am also concerned because after March 1, the authority to enter into agreements, such as the Colbert Consent Decree, is altered. Section 4(4)(a) of Initiative 97 provides:

The attorney general may agree to a settlement with any potentially liable person only if the department [of ecology] finds, after public notice and hearing, that the proposed settlement would lead to a more expeditious cleanup of hazardous substances in compliance with cleanup standards under section 3(2)(d) of this act and with any cleanup orders issued by the department.

(Emphasis added). At a minimum, delay beyond the March 1 deadline would require the Department of Ecology to issue public notice and hold a hearing in order to make the finding required by Section 4(4)(a). The Initiative has very exacting standards for public notice. Publication in the Federal Register is not sufficient.

Obviously, the State of Washington does not want to delay implementation of the cleanup. It is our desire and commitment to take necessary steps to insure that the Consent Decree is entered before March 1, 1989. The purpose of this letter is to solicit the same commitment from the Department of Justice while informing you of its rationale. Although we recognize the need for comment from the Department of Justice, you need to be aware of the significant delays that might be caused if such comment were to require significant changes to the present Decree.

I trust that it is in the interests of both the United States and the State of Washington to expedite handling of this matter so that cleanup of the site can begin in a timely fashion. Please discuss this matter with your appropriate superiors so they too will be informed of the urgent action needed.

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I would appreciate any thoughts you have on this matter. I look forward to swift completion of the Colbert Consent Decree.

Very truly yours,



JEFFREY S. MYERS
Assistant Attorney General
Ecology Division - M/S PV-11
Olympia, WA 98504
(206) 459-6134

JSM/bw

cc: James K. Pharris, Sr. AAG
Jerry Neal, Spokane County
Dan Ballbach, Key Tronic
J.D. McCubbin, U.S. Air Force
Robert Goodstein, Regional Counsel, EPA
Stephanie Johnson, Asst. U.S. Attorney

bcc: Mike Blum ✓